

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRIAN KERRY O'KEEFE,

Petitioner,

v.

ROBERT LEGRAND, et al.,

Respondents.

Case No. 3:14-cv-00477-RCJ-VPC

ORDER

As set forth in this court's order dated August 23, 2016, the Ninth Circuit Court of Appeals issued its mandate remanding this case for further proceedings on August 19, 2016 (ECF No. 32).

Petitioner Brian Kerry O'Keefe currently is represented by CJA counsel. Now before the court is O'Keefe's *pro se* motion to withdraw counsel (ECF No. 39). O'Keefe indicates that the attorney-client relationship has completely broken down. Counsel for O'Keefe filed a response in which he details the work he has undertaken in representation of O'Keefe, but he also indicates that O'Keefe does not trust him and he agrees that the attorney-client relationship has completely broken down. Good cause appearing, the motion to withdraw counsel and proceed *pro se* (ECF No. 39) is granted.

O'Keefe filed several other motions *pro se*, despite the fact that he is represented by counsel. These fugitive filings are not properly before the court and shall be denied. The court notes that in one motion—a motion for leave to file a petition for writ of mandamus—O'Keefe claims that Nevada Department of Corrections personnel mishandled his legal mail and that his counsel never received two boxes of legal

1 materials that O'Keefe mailed (ECF No. 36). The court notes that petitioner has an
2 operative petition on file (see ECF No. 14). Therefore, while he may choose to file an
3 amended petition, he is not required to do so. Moreover, Habeas Rule 5 provides that
4 respondents shall provide the relevant state-court records with their response to the
5 petition. It is, therefore, unclear what further materials O'Keefe might need.

6 **IT IS THEREFORE ORDERED** that petitioner's motion to withdraw counsel and
7 proceed *pro se* (ECF No. 39) is **GRANTED**.

8 **IT IS FURTHER ORDERED** that Mark Eibert is permitted to withdraw as counsel
9 for the petitioner, effective immediately.

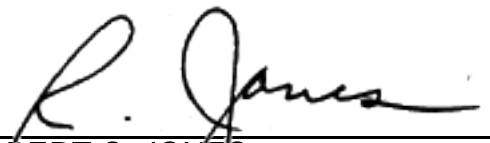
10 **IT IS FURTHER ORDERED** that, within **ninety (90) days** of the date of this
11 order, petitioner shall file his *pro se* amended petition or a notice that he intends to
12 proceed with the petition on file at ECF No. 14. The provisions of this court's scheduling
13 order dated August 23, 2016 (ECF No. 32), otherwise remain in effect, with the due
14 dates for briefing to run from the date that petitioner files his amended petition or files a
15 notice that he shall proceed on the current petition at ECF No. 14.

16 **IT IS FURTHER ORDERED** that petitioner's motion for leave to file motions (ECF
17 No. 33), motion for leave of court to file petition for writ of mandamus (ECF No. 36), and
18 motion for leave of court (ECF No. 38) are all **DENIED**.

19 **IT IS FURTHER ORDERED** that petitioner's counseled motion for ruling on
20 motion to withdraw (ECF No. 42) and counseled motions for extension of time (ECF
21 Nos. 34 and 44) are all **GRANTED**.

1 **IT IS FURTHER ORDERED** that respondents' motion to strike fugitive
2 supplemental petition (ECF No. 46) is **GRANTED**. The Clerk **SHALL STRIKE** the
3 supplemental petition at ECF No. 45. Petitioner may now, going forward, proceed in *pro*
4 se as described in this order.
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6 DATED: 1 February 2017.

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9 ROBERT C. JONES
10 UNITED STATES DISTRICT JUDGE
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